



FILED
9-02-16
02:26 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Starline Tours of Hollywood, Inc.,

Complainant,

vs.

EHM Productions, Inc., dba TMZ,
TMZ.Com, TMZ Celebrity Tour,

Defendant.

Case 16-06-007
(Filed June 7, 2016)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

This Scoping Memo and Ruling sets forth the category, scope and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure¹. Written prepared direct testimony shall be served on September 27, 2016; written prepared rebuttal testimony shall be served on October 25, 2016; and evidentiary hearing is set for 9:00 a.m. on November 8, 2016, in the Commission Courtroom, Junipero Serra State Office Building, 320 West 4th Street, Suite 500, Los Angeles, California.

¹ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

1. Procedural Background

By this complaint, Starline Tours of Hollywood, Inc. (Starline or Complainant) asserts that EHM Productions, Inc., dba TMZ et al. (TMZ or Defendant),² is unlawfully operating a bus operation to carry passengers on a celebrity tour without authority from the Commission. Complainant further asserts that TMZ unlawfully held itself out as operating under a valid license by virtue of the display of a suspended license on vehicles and in advertisements advertising the celebrity tour. Complainant seeks a Commission order directing Defendant to cease and desist operations.

In its answer filed July 29, 2016, TMZ states that TMZ and Starline had a former agreement through which TMZ provided the content and Starline operated the vehicles and employed the drivers for the celebrity tour. TMZ states that, at the time Starline filed its complaint, TMZ provided the content and Pearl Limousine Service LLC (Pearl) operated the vehicles and employed the drivers for the celebrity tour.³ TMZ states that, currently, TMZ does not participate in the celebrity tour; rather, TMZ's affiliate MBLC now provides the content and Exclusive Livery Service, Inc., dba Exclusive Sedan Service, (ESS) now operates the vehicles and employs the drivers for the celebrity tour.

TMZ asserts that TMZ did not, and its affiliate MBLC does not now, operate the vehicles or employ the drivers of the vehicles for the celebrity tours, and that therefore TMZ did not, and its affiliate MBLC does not now, require a

² By motion filed August 24, 2016, Starline seeks to add TMZ's affiliate MBLC Productions, Inc., (MBLC) as a defendant to the complaint. That motion is pending.

³ Pearl's suspended license was purportedly displayed on vehicles and in advertisements advertising the celebrity tour.

license or a permit from the Commission to conduct their operations. TMZ further asserts that, even if it were to require authority from the Commission, it is not a “public utility” against whom a complaint may be made pursuant to Public Utilities Code Section (Pub. Util. Code §) 1702.

A joint prehearing conference was held on August 8, 2016, to identify the issues of law and fact and determine the need for hearing and schedule for resolving the matter. After considering the complaint, answer, and discussion at the prehearing conference, I have determined the issues and schedule of the proceeding to be as set forth in this scoping memo.

2. Scope of Issues to be Determined

The issues to be determined are:

1. May a complaint be brought pursuant to Pub. Util. Code § 1702 against a charter-party carrier?
2. Is TMZ (and/or MBLC, if added as a defendant) either a passenger corporation requiring Commission authority pursuant to Pub. Util. Code § 1031 or a charter-party carrier requiring Commission authority pursuant to Pub. Util. Code § 5371? Specifically, (a) what are TMZ’s operations and/or MBLC’s operations with respect to the celebrity tours conducted with Starline, Pearl, and/or ESS, and (b) do such operations require Commission authority?
3. Did TMZ (and/or MBLC, if added as a defendant) unlawfully hold itself out to the public as operating with valid Commission authority, in violation of Pub. Util. Code § 1034.5 (with respect to passenger stage corporations) or 5371.6 (with respect to charter-party carriers)?
4. If so, should the Commission permanently bar TMZ (and/or MBLC, if added as a defendant) from operating and from receiving a license to operate as a charter-party carrier, and/or should the Commission impose other sanctions? This issue encompasses the following principles historically used

by the Commission in assessing fines, as set forth in the Affiliate Rulemaking Decision, Decision 98-12-075:

- a. What harm was caused by virtue of the violation?
- b. What was TMZ's and/or MBLC's conduct in preventing, detecting, correcting, disclosing, and rectifying the violation?
- c. What amount of fine will achieve the objective of deterrence based on TMZ's and/or MBLC's financial resources?
- d. What fine or sanction has the Commission imposed under reasonably comparable factual circumstances? and,
- e. Under the totality of circumstances, and evaluating the harm from the perspective of the public interest, what is the appropriate fine or sanction?

3. Need for Evidentiary Hearing

Some of the issues, including in particular Issues No. 1 and 4, concern issues of material contested fact upon which parties may offer evidence. Accordingly, I affirm the preliminary determination in the June 16, 2016, instructions to answer that evidentiary hearing are needed.⁴ However, due to the limited scope of such issues, evidentiary hearing will be limited to one day.

4. Schedule

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the complaint:

Complainant's prepared direct testimony shall be served on September 27, 2016.

⁴ See Rule 7.1(b).

Defendants' prepared rebuttal testimony shall be served on October 25, 2016.

Evidentiary hearing is set for 9:00 a.m. on November 8, 2016, in the Commission Courtroom, Junipero Serra State Office Building, 320 West 4th Street, Suite 500, Los Angeles, California.

The proceeding will stand submitted upon the filing of opening and reply briefs on a schedule to be determined at the conclusion of evidentiary hearing, unless the ALJ orders further evidence or argument.

Based on this schedule, the proceeding will be resolved within 12 months as required by Pub. Util. Code § 1701.2(e).

5. Category of Proceeding/*Ex Parte* Restrictions

As was determined in the June 16, 2016, instructions to answer, this matter is categorized as adjudicatory. Accordingly, *ex parte* communications are prohibited.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Hallie Yacknin is the assigned ALJ and the presiding officer for the proceeding.

IT IS RULED:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Hearings are needed, as described above.

4. The presiding officer is Administrative Law Judge Hallie Yacknin.

Dated September 2, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner